Office - Supreme Court, U.S.
FILED
MAY 18 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-6061

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JOSE GARCIA AND FRANCISCO GARCIA,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

---

PETITIONERS' BRIEF ON THE MERITS

THEODORE J. SAKOWITZ
Federal Public Defender
(Attorney of Record)

CHARLES G. WHITE
Assistant Federal Public Defender
301 North Miami Avenue
Miami, Florida 33128-7787
(305) 350-6900
Counsel for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

BEST AVAILABLE COPY

29 pp

QUESTIONS PRESENTED

Whether a prosecution under 18 U.S.C. § 2114 requires a postal nexus in order for a conviction to be sustained.

a) Whether the plain meaning doctrine prohibits review of congressional intent when interpreting 18 U.S.C. § 2114.

b. Whether congressional intent requires a postal nexus in prosecutions of 18 U.S.C. § 2114.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
BASIS OF JURISDICTION	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	10
ARGUMENT	10
CONCLUSION	23

TABLE OF AUTHORITIES

CASES:	Page
Barrett v. *United States*, 423 U.S. 212 (1976)	14
Bell v. *United States*, 349 U.S. 81 (1955)	13
Boston Sand & Gravel Co. v. *United States*, 278 U.S. 41 (1928)	16
Browder v. *United States*, 312 U.S. 335 (1941)	12
Cass v. *United States*, 417 U.S. 72 (1974)	12
Commissioner v. *Acker*, 361 U.S. 87 (1959)	15
Commissioner v. *Brown*, 380 U.S. 563 (1965)	12, 13
Dunn v. *United States*, 442 U.S. 100 (1979)	13
Flora v. *United States*, 357 U.S. 63, (1958)	11
Huddleston v. *United States*, 415 U.S. 814 (1974)	14
Jones v. *United States*, 72 F.2d 873 (7th Cir. 1934)	19
Kelly v. *United States*, 138 F.2d 489 (9th Cir. 1943)	19
Malat v. *Riddell*, 383 U.S. 569 (1966)	12
Morrissette v. *United States*, 342 U.S. 246 (1952)	13, 23
Norton v. *Zerbst*, 183 F.2d 677 (10th Cir. 1936)	19
Perrin v. *United States*, 444 U.S. 37 (1979)	14
Randazzo v. *United States*, 300 F. 794 (8th Cir. 1924)	19
Russello v. *United States*, ___ U.S. ___, No. 82-472 (Nov. 1, 1983)	13, 14
Scarborough v. *United States*, 431 U.S. 563 (1977)	13
Schwegman Bros. v. *Calvert Group*, 341 U.S. 384 (1951)	12
Simpson v. *United States*, 435 U.S. 6 (1978)	22
Train v. *Col. Public Interest Research Group*, 426 U.S. 1 (1975)	12
TVA v. *Hill*, 437 U.S. 153 (1977)	12
United States v. *American Trucking Assns' Inc.*, 310 U.S. 534 (1940)	12, 14, 15
United States v. *Apfelbaum*, 445 U.S. 115 (1980)	14
United States v. *Aragon*, 366 U.S. 643, 648 (1961)	12
United States v. *Cook*, 384 U.S. 257 (1966)	23
United States v. *Culbert*, 435 U.S. 371 (1978)	13

Table of Authorities Continued

Page

United States v. *Fernandez*, 497 F.2d 730 (9th Cir. 1974) 9, 11, 20
United States v. *Garcia*, 718 F.2d 1528 (11th Cir. 1983) . 11
United States v. *Hanahan*, 442 F.2d 649 (7th Cir. 1971) 11
United States v. *Oregon*, 366 U.S. 643 (1961) 12
United States v. *Reeves*, 38 F. 404 (C.C.W.D. Tex 1889) 19
United States v. *Reid*, 517 F.2d 953 (2nd Cir. 1975) . 9, 11, 15, 22, 23
United States v. *Rivera*, 513 F.2d 519 (2nd Cir. 1975) 9, 11
United States v. *Rivera*, 521 F.2dx 125 (2nd Cir. 1975) 9, 11
United States v. *Spears*, 449 F.2d 946 (D.C. Cir. 1971) 19, 23
United States v. *Turkette*, 452 U.S. 576 (1981) 14

SECONDARY SOURCES:

Frankfurter, *Some Reflections on the Reading of Statutes* 47 Col. L. Rev. 527 (1947) 16
Murphy, *Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretations in the "Modern" Federal Courts* 75 Col. L. Rev. 1299 (1975) 12
Nutting, *The Ambiguity of Unambiguous Statutes*, 24 Minn. L. Rev. 509 (1940) 16

OPINION BELOW

Jose and Francisco Garcia were convicted after a jury trial before the Honorable Eugene Spellman, United States District Court Judge for the Southern District of Florida on October 14, 1981. Trial counsel failed to raise the Question Presented herein during his Motion for Judgment of Acquittal made pursuant to Rule 29 of the Federal Rules of Criminal Procedure.

On appeal before the Eleventh Circuit Court of Appeals, the Question Presented was raised in the brief filed with the Court and presented at oral argument. The Eleventh Circuit affirmed the convictions of petitioners in an opinion issued November 8, 1983 and published under the citation 718 F.2d 1528.

BASIS OF JURISDICTION

This case was a direct appeal to the Eleventh Circuit from a conviction after a criminal jury trial. Conviction was affirmed by the Eleventh Circuit on November 8, 1983 in an opinion published at 718 F.2d 1528.

A Petition for a Writ of Certiorari was timely filed with the Supreme Court. This Petition was granted on April 2, 1984.

Jurisdiction is invoked under Title 28, United States Code, Section 1254(1).

APPLICABLE STATUTES

Title 18, United States Code, Section 2114 reads as follows:

> Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States,

with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

STATEMENT OF THE CASE

On July 22, 1981, Special Agent K. David Holmes, posed as someone interested in buying counterfeit money with genuine currency. Accompanied by a confidential informant named Jorge Castro, Agent Holmes went to Douglas Park in Miami, Florida, to meet the individuals with whom he would conduct negotiations for the purchase of counterfeit money. (T 13).[1] Informant Castro introduced Agent Holmes to Ernesto Dominguez and Petitioner Francisco Garcia (T 14) as the purchaser of the counterfeit money (T 15). Dominguez asked Holmes whether he had brought the genuine currency. Agent Holmes responded affirmatively (T 15). When Agent Holmes asked Dominguez if they had the counterfeit, Dominguez responded that the counterfeit was in the trunk of the white Trans-Am in which the defendants had arrived at Douglas Park (T 15-16). The Trans-Am was parked a few spaces away from where Agent Holmes had parked his government vehicle.

Dominguez walked over to the Trans Am, followed shortly thereafter by Agent Holmes (T 16). Petitioner

[1] The statement of facts presented here is almost taken verbatim from the statement of facts as described by the Eleventh Circuit in their opinion published at 718 F.2d 1528.

Jose Garcia was seated in the driver's seat of the Trans-Am (T 17). When Agent Holmes told Petitioner Jose Garcia that he wanted to do the deal, Jose Garcia stated he was not going to count phony bills there because the "place" (Douglas Park) was "sort of heated up" (T 18). The defendants wanted to see the genuine currency before displaying the counterfeit (T 18). At that point, Agent Holmes flashed the $1,800 of government money to Dominguez, while Jose Garcia remained seated in the Trans-Am and Francisco Garcia remained standing near Agent Holmes' vehicle (T 19).

Agent Holmes returned to his vehicle, followed by Dominguez. Agent Holmes once again stated that he wanted to do the deal there, but Dominguez reiterated that the place was "heated up" and said they could do the deal in another location (T 20-21). Dominguez and Francisco Garcia returned to the Trans-Am; as the vehicle drove past, they yelled that they were going to Bryant Park (T 21).

When Agent Holmes arrived at Bryant Park, Francisco Garcia and Dominguez were standing outside the Trans-Am. Jose Garcia was seated inside the vehicle (T 37). Dominguez wanted to see the genuine currency again, but Agent Holmes refused (T 41), commenting that he did not think they had any counterfeit; he asked them to show him a sample. Francisco Garcia then gave Agent Holmes a counterfeit $50 bill to examine. Dominguez assured Agent Holmes they had $85,000 in counterfeit currency to sell. Agent Holmes once again asked to see the counterfeit and began walking to his vehicle (T 42-43).

After Agent Holmes had walked about two paces toward his vehicle, Jose Garcia jumped out of the Trans-Am holding a semi-automatic pistol. Jose Garcia pointed the pistol at Agent Holmes, chambered a round into the

pistol, assumed a combat stance, gripping the pistol with both hands with his finger in the trigger, pointed the loaded, chambered pistol at Agent Holmes and screamed. "Enough of this bullshit, give me the money" (T 43). Agent Holmes raised his arms in the pre-determined distress signal and began inching his way towards his vehicle, telling Jose Garcia that he was going to get the money (T 44).

Surveillance Agent Null observed Agent Holmes with his hands in the air, the prearranged distress signal which the undercover agent was to give if his life was in danger (T 88-89). While Agents Null and Grant were racing to the scene, Agent Null observed Jose Garcia pointing the pistol at Agent Holmes (T 90). Surveillance Agent Grant also saw Jose Garcia pointing the gun at Agent Holmes (T 97).

Within seconds, Agents Null and Grant arrived and shouted at Jose Garcia to drop the gun. At that point, Jose Garcia dropped the weapon (T 44). Agent Grant recovered the weapon from the ground and disarmed it, determining that one round had been chambered into the pistol (T 99). It was registered to Francisco Garcia (T 125). After disarming Jose Garcia and putting him under arrest, Agent Null conducted a pat-down of defendant Jose Garcia and seized a $100 counterfeit bill, which he immediately turned over to Agent Foley (T 91, 124).

Agent Hackenberry was also on surveillance at Bryant Park that day. Upon seeing Agent Holmes raise his hands in the distress signal, he also raced to the scene and observed Francisco Garcia running towards the government vehicle (T 110). Francisco Garcia leaned into the government vehicle through the opened door on the driver's side (T 110), exited the vehicle and, looking back over

his shoulder, ran towards Agent Hackenberry's vehicle, carrying the black leather pouch (T 111). As Francisco Garcia ran away from the scene, the vehicle Agent Hackenberry was driving and Francisco Garcia collided, resulting in the black pouch dropping out of Francisco Garcia's hand (T 113). After Jose Garcia had been disarmed, Agent Holmes observed that the car door of the government vehicle was open; laying next to the vehicle on the ground was the black pouch containing the "flash roll" of government money (T 46).

Agent Grant's pat-down of Francisco Garcia uncovered the trunk key to the Trans-Am and a $50 counterfeit note, which note was turned over to Agent Foley (T 102, 118). Agent Grant subsequently drove the Trans-Am to the Secret Service Miami Field Office where a search of the trunk of the vehicle revealed no counterfeit currency (T 103-04).

The Defense Testimony

Both petitioners testified in their own defense, essentially disputing the government witnesses' testimony as to what had happened and claiming that they had been beaten by the agents. Jose Garcia testified that the confidential Informant Jorge Castro had proposed that they show a few counterfeit bills to a potential purchaser and steal the genuine currency which the man would bring as payment for the counterfeit (T 138, 140-141). Jose Garcia had agreed, and Informant Jorge Castro had given him a $100 counterfeit bill and had given Francisco Garcia a $50 counterfeit bill (T 142). According to Jose Garcia, the plan was simply to take the money. He denied that a pistol was used (T 143). Jose Garcia testified that on July 22, 1981, they had met the agent at Douglas Park and had later moved to Bryant Park (T 145) where there had been an argument about who would show his money first (T 148).

Jose Garcia said that he had never had a gun at the scene. (T 157). Instead, he claimed that Agent Holmes, using the agent's own weapon, had pistol-whipped Jose Garcia on the head (T 148-51). He also testified that Agent Holmes had beaten Ernesto Dominguez to force Dominguez to reveal the location of the counterfeit money (T 148).

Francisco Garcia testified that Informant Jorge Castro had given him the $50 counterfeit bill (T 180-81). Francisco Garcia said that Ernesto Dominguez had displayed to Agent Holmes the $50 counterfeit and had returned it to Francisco Garcia (T 192). He further testified that the weapon which was introduced into evidence had been in the glove compartment of the Trans-Am (T 182). Although he agreed that a car had hit him, Francisco Garcia denied that he had ever possessed the pouch containing the U.S. Government money (T 193). He also testified that his brother never had a gun (T 194).

The defense also called Marta Pedrosa, who testified that on July 22, 1981, while standing outside her home, she had seen two cars speeding to the park and stopping near a white Trans-Am (T 228-30). According to Pedrosa, she ran to the park and saw the agents jumping three men and kicking them (T 233). She identified Jose Garcia and Francisco Garcia as two of the men who had been arrested and kicked (T 234). She said she had seen Francisco Garcia fall after being hit by the automobile, but stated that she had not seen any black pouch in his hand or on the ground (T 238). She identified Agent Foley as having twisted Jose Garcia's arm, demanding to know where the money was (T 239). When the agent had found the key to the Trans-Am, he had gone into the vehicle and had come out holding an automatic pistol (T 241-42). She thought the gun had been removed from the glove compartment.

Rebuttal By The Government

On July 22, 1981, Edna Benson was in her house, which faces the park. She had noticed the people and heard screaming (T 262). She had gone to the park and saw men being arrested one of whom was struggling to avoid being handcuffed (T 263). The officers were trying to quiet him (T 264). The other young men being handcuffed were quiet. Benson saw no one hit, beat or strike those being arrested (T 265). She had arrived too late to make any relevant observations regarding the gun or the black leather pouch. (T 277).

After the government's rebuttal, the court permitted the defense to reopen its case (T 292-337). The defense called Rafael Pedrosa, father of Maria Pedrosa, as an eyewitness to the events of July 22, 1981.

Pedrosa testified that he saw cars speeding to Bryant Park and walked down to the park to see what had happened (T 341). He saw three young men handcuffed (T 342). One of the agents found a key to the Trans-Am, searched the car, came out of the vehicle with a pistol, removed the clip and placed it in his belt (T 343-45). He testified that he never saw any black leather pouch similar to that entered into evidence by the government. (T 346). Pedrosa stated that he did not see anything that had happened in the park before his arrival and that when he arrived at the park the three men were already handcuffed and one was on the ground hurt (T 358). In addition, he could not tell whether the officer who searched the Trans-Am and exited with a pistol had anything in his hands when he entered the Trans-Am (T 364). He did not see the officers strike any of the men arrested.

Sur-Surrebuttal By The Government

The government then called Alex Suarez who had also been present in the park on July 22, 1981, when the petitioners were arrested. He observed the agent raise his hands, back away and say, "Don't shoot!, although he never saw the gun (T 379, 387). He saw the other agents arrive on the scene and arrest the three men. He did not observe any mistreatment of the three men (T 381). He, too, observed the car being searched. He said the agent who searched the car had a weapon in his waistband before he entered the Trans-Am (T 382).

The petitioners, along with Ernesto Dominguez, who is not a party to these proceedings, were charged in a five count indictment with conspiracy to steal money belonging to the United States valued in excess of $100, in violation of 18 U.S.C. § 371 (Count I), stealing money belonging to the United States valued in excess of $100, in violation of 18 U.S.C. § 641 (Count II), robbery of money belonging to the United States with an assault involving the use of a dangerous weapon, in violation of 18 U.S.C. § 2114 (Count III), possession of counterfeit notes, in violation of 18 U.S.C. § 472 (Count IV), forcibly assaulting federal officers, in violation of 18 U.S.C. § 111 (Count V).

On October 6, 1981 petitioners proceeded to a jury trial. Petitioners' motions for judgment of acquittal at the close of the government's case and at the close of all the evidence were denied. On October 14, 1981 the jury returned a verdict of guilty of all counts except Count V as to Francisco Garcia.

On November 17, 1981 Jose Garcia was sentenced to a term of incarceration of twenty-five (25) hears on Count III, five years on Count II consecutive with Count III, five years on both Counts I and IV to run concurrent with

the term imposed on Count II, and the ten (10) years on Count V to run consecutive with that term imposed on Count III for a total of forty (40) years according to the Judgment and Commitment Order.

On that same date Francisco Garcia was sentenced to a term of incarceration of twenty-five (25) years on Count III and five years each for Counts I, II, and IV to run concurrently with each other and consecutively to that term of incarceration imposed in Count III for a total of thirty (30) years.

Petitioners filed a timely appeal which raised the issues that it was error for the trial judge to a) deny petitioners' motions for judgment of acquittal on Count III (18 U.S.C. § 2114), b) admit the counterfeit bills, c) impose consecutive sentences for convictions under Counts II, III and V, and d) deny petitioners' motions for judgment of acquittal based on the insufficiency of the evidence. Oral argument was heard before a panel of the Eleventh Circuit Court of Appeals comprised of Judges Fay and Kravitch, with Senior District Judge Atkins sitting by designation. The conviction was affirmed in an opinion published at 718 F.2d 1528 and a Mandate was issued.

A writ of certiorari was submitted by petitioners requesting review of that portion of the Eleventh Circuit's decision which held that no postal nexus was required to sustain a conviction under 18 U.S.C. § 2114. In affirming the conviction a direct conflict was created with other Courts of Appeal. *See United States* v. *Rivera*, 521 F.2d 125 (2nd Cir. 1975). *United States* v. *Reid*, 517 F.2d 953 (2nd Cir. 1975). *United States* v. *Rivera*, 513 F.2d 519 (2nd Cir. 1975) *cert. denied*, 423 U.S. 948 (1975). *United States* v. *Fernandez*, 497 F.2d 730 (9th Cir. 1974).

This Court granted the Writ of Certiorari on April 2, 1984.

SUMMARY OF ARGUMENT

The most important function of a court when interpreting a statute is to give effect to the intent of the enacting legislature. In order to determine Congressional intent recourse to legislative history is necessary. When a criminal statute is in issue then great care should be exercised so that only that behavior which Congress intended to criminalize is punished.

There is no rule which excludes consideration of Congressional intent because of a supposed unambiguity in the statutory language. Words may have a plain meaning when read out of context, but a different meaning when read in conjunction with the intent of Congress. The plain meaning doctrine is not favored as a rule of exclusion.

The petitioners were convicted of violations of 18 U.S.C. § 2114. The legislative history is clear that only offenses involving a postal nexus are proscribed by that statute. Although the committee reports are not clear, the statements made by Congressman Dobbins, the floor manager of the 1935 Amendment at issue here, clearly state what the bill intended to accomplish. There was never any doubt among the Congressmen considering this amendment that it was anything more than an amendment to the Postal Robbery statute. There was certainly no statement of any authority that the amendment would apply the penalty of § 2114 (a minimum 25 year sentence if the victim is wounded or placed in jeopardy by a dangerous weapon) to all lawful custodians of all government property.

ARGUMENT

This Court has never before considered the question presented in this Writ of Certiorari. At this point, the great weight of authority from the various Circuit Court

of Appeals suggests that a "postal nexus" is required before a conviction is warranted for a violation of 18 U.S.C. § 2114. *United States* v. *Rivera*, 521 F.2d 125 (2nd Cir. 1975). *United States* v. *Reid*, 517 F.2d 953 (2nd Cir. 1975). *United States* v. *Rivera*, 513 F.2d 519 (2nd Cir. 1975), *cert. denied*, 423 U.S. 948. *United States* v. *Fernandez*, 497 F.2d 730 (9th cir. 1974) *cert. denied*, 420 U.S. 990 (1975), *rehearing denied* 421 U.S. 1017 *contra*, *United States* v. *Garcia*, 718 F.2d 1528 (11th Cir. 1983). Back in 1974, the Solicitor General conceded that the legislative history required a "postal nexus." *United States* v. *Hanahan*, 442 F.2d 649 (7th Cir. 1971). *vac & remanded*, 414 U.S. 807 (1973).

The Eleventh Circuit in holding that prosecution under 18 U.S.C. § 2114 did not require a postal nexus specifically adopted the dissent of Judge Mansfield in the *Reid* case.[2] *United States* v. *Garcia*, 718 F.2d at 1533. It is the reasoning of Judge Mansfield and the Eleventh Circuit that (1) the wording of 18 U.S.C. § 2114 is clear and unambiguous, and therefore there is no need to resort to any legislative history and (2) the legislative history does not clearly indicate a need for a postal nexus. Petitioner disputes both of these contentions.

A) That The Plain Meaning Doctrine Does Not Prohibit Review Of Congressional Intent.

When interpreting statutes it is the duty of the judiciary to express the intent of the enacting legislative body. *Flora* v. *United States*, 357 U.S. 63, (1958). Sometimes

---

[2]Judge Mansfield did not dissent or dispute the Government's concession on the inapplicability of § 2114 to the facts in *United States* v. *Rivera*, 521 F.2d at 127, which case was heard after the *Reid* case and considered the identical issue before this Court.

the intent of the legislative will be evident upon a literal reading of a statute's words. In almost all the cases which have interpreted federal statutes, resort was made to Congressional intent as evidenced by floor debates and committee reports. Included in this list are all the cases cited for the applicability of the plain meaning doctrine to the instant case. These cases are *Malat* v. *Riddell*, 383 U.S. 569 (1966); *Commissioner of Internal Revenue* v. *Brown*, 380 U.S. 563, 571-72 (1965); *United States* v. *Aragon*, 366 U.S. 643, 648 (1961); *Schwegmann Bros.* v. *Calvert Corp.*, 341 U.S. 384, 395-96 (1951); *Browder* v. *United States*, 312 U.S. 335, 338 (1941); and *United States* v. *American Trucking Assn's., Inc.*, 310 U.S. 534, 543 (1940).

The plain meaning doctrine is not favored by this Court as a principle used to exclude evidence useful for the courts when interpreting statutes. This Court has said, "When aid to construction of the meaning of words, as used in the statute, is available there can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10 (1975), quoting *United States* v. *America Trucking Assn's. supra* at 545, *Cass* v. *United States*, 417 U.S. 72 (1974). See generally Murphy, *Old Maxims Never Die: The "Plain-Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts*, 75 Col. L. Rev. 1299 (1975).

Even if the words are unambiguous, the courts will sometimes look to legislative intent in order to make sure the statute says what it is supposed to say. *TVA* v. *Hill*, 437 U.S. 153 (1977). In *TVA*, the Court was considering whether strict enforcement of the Endangered Species Act should be allowed to terminate a large scale and very expensive dam building project just before completion.

The Court first found the wording of the statute to be plain, but still sought to investigate the legislative history to look for confirmation that Congress had intended the conflicting interests of environmental concern and economic development to be balanced as they were in the statute.

The scope of a term, not its definition is sometimes at issue. *Commissioner* v. *Brown*, *supra*. In *Brown* the Court assigned a plain meaning to the word "sale," but went on to investigate legislative intent.

> Unquestionably the courts in interpreting a statute, have some scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of the meaning would lead to absurd results . . . or would thwart the obvious purpose of the statute.
>
> 380 U.S. at 571.

The need to determine the intent of Congress becomes more pressing when a criminal statute is involved. A federal criminal statute should be construed narrowly in order to encompass only that conduct which Congress intended to criminalize. *Dunn* v. *United States*, 442 U.S. 100, 112 (1979). If the ambit of the statute is ambiguous the rule of lenity ought to be applied. *Bell* v. *United States*, 349 U.S. 81, 83 (1955). Naturally, the rule of lenity should "not be used in complete disregard of the purpose of the legislature." *United States* v. *Culbert*, 435 U.S. 371, 379 (1978), quoting *Scarborough* v. *United States*, 431 U.S. 563, 577 (1977). The rule of lenity is often disregarded when an ambiguity in the scope of particular words in a statute is in conflict with clearly expressed Congressional intent to battle a particular evil or give prosecutors more effective tools for combating organized crime. *Russello* v. *United States*, ___ U.S. ___ No.

82-472 (Nov. 1, 1983). *United States* v. *Turkette*, 452 U.S. 576 (1981). *United States* v. *Apfelbaum*, 445 U.S. 115 (1980). *Perrin* v. *United States*, 444 U.S. 37 (1979). *Barrett* v. *United States*, 423 U.S. 212 (1976). *Huddleston* v. *United States*, 415 U.S. 814 (1974). In all the above cited cases, the Court was interpreting criminal statutes which were comprehensive and clearly intended to be given broad application. Consideration was always given the Congressional intent.

In *American Trucking*, *supra*, the plain meaning rule as an exclusion of evidence was repudiated. As the Court stated:

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results. However, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no

> "rule of law" which forbids its use, however clear the words may appear on "superficial examination." The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the test of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."
>
> 310 U.S. at 542-44

It is interesting that Judge Mansfield quoted out of context a small section of the above holding, and used it to proclaim that the plain meaning must always prevail despite legislative intent to the contrary. This irony was noted by the majority in *Reid*, 517 F.2d at 957 n.3a.

Despite the *American Trucking* case, there are some cases for which statutory wording may not appear to be ambiguous, yet needs to be clarified.[3] There are cases

---

[3] *See Commissioner* v. *Acker*, 361 U.S. 87 (1959), particularly Frankfurter's dissent. The case involved a seeming direct contradiction between the plain meeting of the statute and congressional intent. Frankfurter spoke about how the British system excluded

where a court can find no need to look at legislative intent. Before deciding that such a course ought apply in the instant case, consideration should be given to the words of Felix Frankfurter:

> Anything that is written may present a problem of meaning, and that is the essence of the business of judges in construing legislation. The problem derives from the very nature of words. They are symbols of meaning . . . If individual words are inexact symbols, with shifting variables, their configuration can hardly achieve invariant meaning or assured definiteness.
>
> Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Col. L. Rev. 527, 528 (1947)

In the instant case, petitioners are entitled to have this Court consider their claim that Congress never intended to bring their actions within the ambit of § 2114.[4] The plain meaning doctrine as a means of ignoring Congressional intent is no longer the law.

---

evidence of Parliamentary intent from its statutory interpretations and quoting from *Boston Sand & Gravel Co.* v. *United States*, 278 U.S. 41, 48 (1928) said:

> It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.
>
> 361 U.S. at 95

[4] Petitioners do not concede the nonambiguity of 18 U.S.C. § 2114. While the appearance of the disjunctive may appear to clearly mean two separate concepts it is necessary to study Congress' limitations intended on those meanings. *See* Nutting, *The Ambiguity of Unambiguous Statutes*, 24 Minn. L. Rev. 509 (1940).

B) That Congressional Intent Requires A Postal Nexus In Prosecutions Of 18 U.S.C. § 2114

Prior to 1935, the predecessor statute to 18 U.S.C. § 2114 read as follows:

> Whoever shall assault any person having lawful charge, control or custody of any mail matter, with intent to rob, steal or purloin such mail matter or any part thereof, or shall rob any person of such mail or any part thereof, shall for a first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery, he shall wound the person having custody of the mail, or put his life in jeopardy by the use of a deadly weapon, or for a subsequent offense, shall be imprisoned twenty-five years. Act of March 4, 1909, Ch. 321, § 197, 35 Stat. 1126.

The 1935 amendment to 18 U.S.C. § 2114, which at that time was found at 18 U.S.C. § 320, added the terms "or of any money or other property of the United States" to the mail matter previously covered by the statute. These changes were requested by the Postmaster General, were referred to the Post Office Committees of each House. The committee reports, of which the general language introducing the reports was quoted so approvingly by Judge Mansfield, consist almost exclusively of a letter from the Postmaster General, which is reproduced.

Post Office Department,
Office of the Postmaster General,
February 20, 1935

Hon. James M. Mead,
Chairman Committee on the Post Office and Post Roads,
House of Representatives.

My Dear Mr. Mead:

The receipt is acknowledged of your letter of the 16th instant, requesting a report on H.R. 5360, a bill providing

for punishment for the crime of robbing or attempting to rob custodians of Government moneys or property.

Assaults upon custodians of mail matter are punishable under section 197 of the Federal Penal Code (18 U.S.C. § 320), which provides a penalty of 25 years imprisonment if the custodian is wounded or his life is put in jeopardy by the use of a dangerous weapon. If the person assaulted is a custodian of Government funds (not mail) the maximum punishment that can be imposed is imprisonment for not more than 10 years and a fine of not more than $5,000; and no penalty is provided for attempts to commit such crimes. Recent years have witnessed a substantial increase in crimes of the latter type and it is believed that section 197 of the Penal provisions the crime of robbing or attempting to rob custodians of Government moneys. Legislation to this effect was recommended in the Postmaster General's annual report for 1933 and two bills, H.R. 6546 and H.R. 7214 were introduced and referred to the House Judiciary Committee but neither bill was reported out by the committee. The recommendation for the passage of this legislation is renewed.

Very truly yours,
James A. Farley
Postmaster General

H.R. Rep. No. 582, 74th Cong., 1st Sess. (1935)
and
S. Rep. No. 1440, 74th Cong., 1st Sess. (1935)

This letter is the only input from any federal agency contained within the committee reports. It clearly carries with it the assumption that the Postmaster General would be one of the few people interested in this Act. Surely every other agency was covered by the provisions

of what is now known as 18 U.S.C. § 2112. In 1935 the predecessor of this statute was found in 18 U.S.C. § 99. Section 99 clearly made it a federal crime to rob someone of government property. The statute had been in effect since 1909. Clearly, the amendment to the § 320 was intended to apply only to postal matters. As the *Reid* majority noted expanding the scope of § 2114 to exclude a postal nexus "was a misguided effort on any view since the robbery of any government property had long been covered by what is now 18 U.S.C. § 2112, see *e.g.*, Act of March 2, 1867, ch. 193, 14 Stat. 557, codified in Rev.Stat. 5456; 18 U.S.C. § 99 (1946 ed.), and the real importance of § 320 was that its assault provisions covered all postal employees whereas the only postal employees covered in the general statute concerning assaults on federal officers, 18 U.S.C. §§ 253 and 254, were "post-office inspectors". 517 F.2d at 951 n.4.

Prior to 1935 there was absolutely no doubt that 18 U.S.C. § 320 applied only to postal mail and its lawful custodians. The ancestors to § 2114 go all the way back to 1792.[5] There has been litigation over whether in certain cases the government had proven that the victim was an authorized custodian of mail matter sufficient to bring his actions within the statute. *Jones* v. *United States*, 72 F.2d 873 (7th Cir. 1934). *Randazzo* v. *United States*, 300 F. 794 (8th Cir. 1924). *United States* v. *Reeves*, 38 F. 404 (C.C.W.D. Texas 1889). Likewise, there has been litigation on whether money and postage stamps constituted mail matter before the 1935 Amendment. *Kelly* v. *United States*, 138 F.2d 489 (9th Cir. 1943). *Norton* v. *Zerbst*, 183 F.2d 677 (10th Cir. 1936). Obviously, when the Postmas-

---

[5] *See United States* v. *Spears*, 449 F.2d 946, 950-54 (D.C. Cir. 1971) for excellent history of postal robbery statute.

ter General wrote to Congressman Mead, he wanted a statute which protected all his employees with those extraordinary protections historically afforded to postal employees and the Post Office.

Both the government and the Eleventh Circuit argue that the disjunctive "or" eliminates all ambiguity and conclusively proves that Congress intended to significantly increase the scope of the statute's proscriptions. Referral to the Congressional Record will reveal why the disjunctive was used. Congressman Dobbins, who was the floor manager of the bill, and had worked on it in the House Post Office Committee said:

> The trouble with the language as originally written "custody of mail matter, money, or other property of the United States" is that it might limit the offense to mail matter of the United States, whereas it is designed to include within the protection of the section all mail matter, whether it belongs to the United States or is mail belonging to a foreign citizen and is temporarily in the custody of the United States while being in the United States mails.
>
> 79 Cong. Rec. 7875

As can be seen from Congressman Dobbins' comments, the original bill did not use a disjunctive. A disjunctive was only used because of the Committee's desire to increase the scope of the original bill to include foreign mail by adding the "or". See 79 Cong. Rec. 9380, when the bill was read with amendments and passed.

At another time, Congressman Dobbins described completely the scope of the Act in what the Ninth Circuit characterized "as illuminating as legislative history could possibly be". *United States* v. *Fernandez*, 497 F.2d at 740.

> Mr. Speaker, the gentleman from Ohio objects to the 25-year penalty provided in this bill. The penalty

> clause is not legislation. If this bill is not passed, the statute will still contain the mandatory 25-year penalty.
>
> The only purpose of the pending bill is to extend the protection of the present law to property of the United States in the custody of its postal officials, the same as it now extends that protection to mail matter in the custody of its postal officials. It just includes property of the United States in addition to mail matter which is protected; and let me say there are many custodians of postal stations who have a great amount of money in their custody but little mail; for instance in those substations where money orders are sold. If a bandit attacks those employees seeking that money, there is no way to prosecute the bandit under the present law, but if he is merely after a postal card of a letter he can be prosecuted.
>
> I think this makes a salutary change in the law. It is advocated by the Post Office Department and it seems to be there ought to be no objection to it.
>
> 79 Cong. Rec. 8205

There was more debate. Congressman Truax was questioning the propriety of making a mandatory twenty-five year sentence for the proposed Act and not extending the same protection to people charged with burglary of a home. Congressman Wolcott's response addressed the jurisdictional issue raised by Mr. Truax. This exchange was cited by Judge Mansfield as evidence that Congress intended a broad bill. *United States* v. *Reid*, 517 F.2d at 969. However, after being informed by Congressman Dobbins of the intended scope and purpose of the bill, Mr. Truax made the following proposal to broaden its scope which was never adopted.

> Mr. Truax: Mr. Speaker, I will say to the gentleman from Illinois that I think we ought to have some

> salutory laws that will protect the Government and its property from the Wall Street bandits.
>
> 79 Cong. Rec. 8205

While humor may be misplaced in the Halls of Congress it certainly exists albeit in a drier form than prevails in more colloquial settings. Mr. Truax never did submit an amendment such as he advocated despite being invited to do so by Mr. Dobbins. Clearly Mr. Truax's tongue was in his cheek during this exchange.

The comments of the floor manager of a bill in Congress are entitled to considerable weight if the words are consistent with the stated purpose of the proposed law. *Simpson* v. *United States*, 435 U.S. 6, 13-14 (1978). In *Simpson*, the bill in question never went through committee hearings and the only statement of its purpose was offered on the floor by the Congressman who introduced it. In the instant case, Congressman Dobbins interpreted for his fellows congressmen what the Committee had discussed relative to the wording of the amendment and the intent of the Committee. He made it clear that he was working closely with counsel from the Post Office. 79 Cong. Rec. 8205. Most of the other congressmen who contributed to the debate agreed that the statutory construction was practically the worst ever seen. 79 Cong. Rec. 7875.

In 1935, 18 U.S.C. § 320 was located in the section of the Code entitled Offenses Against the Post Office. *United States* v. *Reid*, 517 F.2d at 957. In all the codifications back through to 1792 the ancestors of 18 U.S.C. § 2114 were considered exclusively postal crimes.

The Revisors of the Code in 1948 transferred § 320 to the Chapter titled Robbery and Burglary. Act of June 25, 1948, ch. 645, 62 stat. 797. The 1948 Revision was not

designed to create new crimes. *United States* v. *Reid*, *id.* "the general purpose of the new Code was to "codify and revise . . . The original intent of Congress is preserved. *United States* v. *Cook*, 384 U.S. 257, 260 (1966). *Morissette* v. *United States*, 342 U.S. 246, 266-69 n.28 (1952). *See also*, *United States* v. *Reid*, *supra* at 957-585 for a discussion of the Brown Commission comments on the proposed New Federal Criminal Code and Senator McClellan's memorandum on the history of the proposed Code in 1971 which support the view that § 2114 was intended to apply only to mail.

The 1948 Revisions may have been in error when they took § 320 away from the other postal offenses. As the District of Columbia Circuit ruled in *United States* v. *Spears*, *supra* the gravaman of § 2114 is an assault, not a robbery.

It was only when standing alone and out of context in the Robbery chapter that the language of § 2114 began to appear clear and unambiguous. As the Reid majority said:

> No Congressman could have supposed that in passing an amendment to that section proposed by the committee dealing with the postal service, he was creating a new crime with respect to government property generally.
>
> 517 F.2d at 957 n. 3a

CONCLUSION

For the reasons set forth above petitioners ask this Court to vacate the conviction as to Count III of the

Indictment and enter a judgment of acquittal as to that Count.

THEODORE J. SAKOWITZ
Federal Public Defender
(Attorney of Record)

CHARLES G. WHITE
Assistant Federal Public Defender
301 North Miami Avenue
Miami, Florida 33128-7787
(305) 350-6900
Counsel for Petitioners